

# **San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings**

## **PURPOSE:**

The San Diego City Council [City Council] may impose upon itself requirements which allow greater access to its meetings than prescribed by the minimum legal standards set forth in the California Open Meeting Law, commonly known as "the Brown Act" (Cal. Gov't Code §§ 54950-54963). The purpose of this temporary rule is to create an opportunity in the open session portion of the regular meetings of the City Council to enhance public knowledge and to gain public input on matters considered by the City Council in closed sessions.

Further, the temporary rule is to ensure in the interim, and prior to the development and approval of more comprehensive and permanent rules, that the City Council's practices shall exceed the minimal requirements of the Brown Act so that the City Council is not in jeopardy of suffering declaratory or injunctive orders, as in the cases of *Cause v. City of San Diego* and *Shapiro v. City Council of San Diego*.

## **I. FORM AND MANNER OF NOTICE:**

- A. All closed session items shall appear on a Closed Session Agenda or Supplemental Closed Session Agenda, which agenda may be separate and distinct from the City Council's regular meeting agenda, but which shall be made available to the public and distributed concurrent with the regular meeting agenda of the City Council, which shall meet the seventy-two (72) hour public noticing requirement. A line item shall appear on the regular City Council docket indicating that closed session items will be appearing on a separate Closed Session Agenda. The closed session items will be appearing on a separate Closed Session Agenda. The Closed Session Agenda shall clearly indicate the time and place that open session discussion of closed session items is scheduled to occur. Closed Session Agenda shall further indicate the time and place the scheduled closed session will occur.
- B. All closed session agenda items shall contain descriptions which can be easily understood and informative to the public in a meaningful way, unless to do so would harm the City and public interest by disclosing facts that are not known to the adverse party in any litigation or negotiations. Meaningful means: "clear and specific enough to alert a person of average intelligence and education whose interests are affected by the item that he or she may have a reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood words.

- C. For authorized exceptions to open meetings, the following minimum noticing and disclosure shall apply:

(1) Significant Exposure to Litigation

When a closed session is scheduled under the heading -- significant exposure to litigation -- unless the facts and circumstances creating the threat of litigation are not yet known to the likely plaintiffs, such facts and circumstances must be made known to the public. Supplemental oral or written announcements shall be made in the following circumstances:

- (a) There has been no communication yet from the foreseeable plaintiffs but the City is aware of circumstances likely to prompt a litigation threat -- for example, an accident, disaster, incident, or transactional dispute; in such instances the circumstances shall be stated on the agenda known at the time of its 72-hour advance posting or announced prior to the closed session if not.
- (b) If a claim or some other written threat of litigation has been received, the document is a public record and a copy shall be attached to the agenda if known at the time of its 72-hour advance posting or announced and distributed to those requesting a copy prior to the closed session if not.
- (c) When the closed session is deemed to be justified by a litigation threat made in an open and public meeting, reference to the statement shall be publicly stated on the agenda if known at the time of its 72-hour advance posting or announced prior to the closed session if not.
- (d) When an oral threat of litigation is made outside a meeting, it may not be made the basis of a closed session unless the official who heard it has made a memo explaining what was and by whom. A copy of the memo shall be attached to the agenda if the threat is known at the time of its 72-hour advance posting or announced and distributed prior to the closed session if not.

(2) Conference with Real Property Negotiators

Property: Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(3) Conference with Legal Counsel – Existing Litigation

Name of case: (Specify by reference to claimant's name, names of parties, case, or claim numbers)

Or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

- D. In open session, before public comment or City Council discussion of any closed session item, the City Attorney or appropriate staff shall provide an oral update or progress report on matters under litigation, real property negotiations, or employee unit bargaining.

## **II. PUBLIC PARTICIPATION:**

The public shall have the opportunity to directly address the City Council on any closed session item on the agenda, prior to City Council questions and discussion on the item and after the oral report by the City Attorney or appropriate staff.

## **III. COUNCIL QUESTIONS AND DISCUSSION IN OPEN SESSION:**

At the regular or special meeting of the City Council, the Mayor and Councilmembers shall have the opportunity to discuss the basis for convening into closed session, ask questions and respond to questions from the public.

## **IV. TRANSCRIPTION OF CLOSED SESSIONS:**

All closed sessions shall be transcribed by a court certified reporter. All transcripts shall be retained.

**V. REPORTING OF CLOSED SESSION RESULTS IN OPEN SESSION:**

- A. After every closed session, if a public report of any final action taken in closed session is required as set forth herein, the Mayor and City Council shall adjourn from closed session, reconvene in open session, and publicly report such final action and the vote or abstention of every member present as follows:
- (1) Approval of an agreement concluding real estate negotiations pursuant to California Government Code section 54956.8 shall be reported after the agreement is final, as specified below:
    - (a) If the Mayor and City Council's own approval renders the agreement final, they shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.
    - (b) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.
  - (2) Approval given to the City's legal counsel to defend, or seek, or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under California Government Code section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.
  - (3) Approval given to its legal counsel of a settlement of pending litigation, as defined in California Government Code section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

- (a) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.
    - (b) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.
  - (4) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to California Government Code section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the non-renewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.
  - (5) Approval of an agreement concluding labor negotiations with represented employees pursuant to California Government Code section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.
- B. Reports that are required to be made pursuant to this section may be made orally or in writing. The City shall provide to any person who has submitted a written request to the City within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to California Government Code sections 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that an oral summation of the substance of the amendments has been made for the benefit of the document requester or any other person present and requesting the information.

- C. The documentation referred to in paragraph (B) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.
- D. Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

## **VI. LITIGATION LOG:**

The City Attorney, in coordination with the City Clerk, shall provide to the Mayor and City Council a weekly listing of all litigation filed against or by the City of San Diego, its officers or employees, and any City boards, redevelopment agencies, and commissions, etc. (collectively "the City") that has been served upon the City. The list shall include the court in which the case was filed, the name of the litigants, the date filed, and the Court case number. A copy of the list shall be kept on file in the Office of the City Clerk and available for members of the public. The list shall be provided every week, and shall report on cases served the immediate succeeding week.